U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

MATTER OF S-K-

DATE: JULY 17, 2018

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a physician and research associate specializing in neurology, seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). After a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion, grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).

The Director of the Nebraska Service Center denied the Form I-140, Immigrant Petition for Alien Worker, finding that the Petitioner had not established that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

On appeal, the Petitioner submits additional evidence and contends that he is eligible for a national interest waiver under the *Dhanasar* framework. In addition, he contends that the Director imposed an overly high standard of proof. With respect to the standard of proof in this matter, a petitioner must establish that he meets each eligibility requirement of the benefit sought by a preponderance of the evidence. *Matter of Chawathe*, 25 I& N Dec. 369, 375-76 (AAO 2010). In other words, a petitioner must show that what he claims is "more likely than not" or "probably" true. To determine whether a petitioner has met his burden under the preponderance standard, we consider not only the quantity, but also the quality (including relevance, probative value, and credibility) of the evidence. *Id.* at 376; *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm'r 1989).

Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an

individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
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> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
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> (B) Waiver of job offer –
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> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884.[1] *Dhanasar* states that after EB-2 eligibility has been established, USCIS may, as a matter of discretion, grant a national interest waiver when the below prongs are met.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s) considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[2]

II. ANALYSIS

Although not addressed in the Director's decision, the record demonstrates that the Petitioner qualifies as a member of the professions holding an advanced degree.[3] The sole issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest.

At the time of filing, the Petitioner was working as a "Research Associate at the [redacted] in Kazakhstan. He asserts that his work there has focused "on implementing his discoveries in the diagnosis and treatment of traumatic brain injuries for training programs for the official Continuing Medical Education System intended for neurologists, neurosurgeons, neurophysiologists, and functional diagnostics specialists."

A. Substantial Merit and National Importance of the Proposed Endeavor

The Petitioner indicates that he intends to develop "a cross-platform application for mobile devices called [redacted] This application is designed as a tool for neurologists, neurosurgeons, vascular surgeons, reanimatologists, general physicians, radiologists, and all other specialists who deal with post-stroke patients." He further explains that the [redacted] application helps physicians "work with the [medical] chart of a patient who is experiencing a stroke." For example, the Petitioner states that his mobile application "helps the doctor log the patient's symptoms in accordance with

[2] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[3] The Petitioner presented an academic credentials evaluation indicating that his degree from [redacted] is the foreign "equivalent of a Doctor of Medicine (M.D.) Degree at an accredited institution of higher education in the United States." *See* 8 C.F.R. § 204.5(k)(3)(i)(A).

ICD-10 (International Classification of Diseases, 10th revision),[4] showing the area of damage, type of stroke, and clinical symptoms." In addition, he notes that [redacted] "assists the doctor in evaluating the neurological status of the patient using NIHSS (National Institutes of Health Stroke Scale), Rankin, and Glasgow scales, as well as the results of standard diagnostic tests." Furthermore, he indicates that his mobile application "has a version designed for the general population, making it easier for people to find information about stroke symptoms, types of stroke, and the first actions to take if they start to experience or witness these symptoms."

The Petitioner contends that his [redacted] mobile application will benefit the United States healthcare system through improving patient outcomes and reducing medical costs. He further states that [redacted] will help to "reduce the incidence of stroke, as well as decrease the mortality rate associated with strokes," and raise awareness of stroke symptoms. We find that the Petitioner's proposed work has substantial merit.

To satisfy the national importance requirement, the Petitioner must demonstrate the "potential prospective impact" of his work. Here, the Petitioner's evidence, including letters of support from colleagues, indicates that the [redacted] mobile application offers potential benefits in advancing stroke prevention, diagnosis, and treatment. For instance, [redacted] a consultant neurologist at [redacted] in Spain, discusses the potential of [redacted] to "decrease the amount of time spent in ER [emergency room] from the moment of admission until the treatment initiation, which is absolutely critical" for effective treatment. In addition, [redacted] a neurosurgery physician with [redacted] in Spain, asserts that [redacted] will help "with stroke prevention and help to reduce mortality and disability caused by a stroke." As the Petitioner has documented both the substantial merit and national importance of his proposed mobile application development project aimed at advancing the treatment of stroke patients, we find that he meets the first prong of the *Dhanasar* framework.[5]

B. Well Positioned to Advance the Proposed Endeavor

The second prong shifts the focus from the proposed endeavor to the Petitioner. The record includes documentation of his research articles, conference presentations, academic credentials, medical training, peer review activities, diagnostic curricula development, business plan for launching [redacted]

[4] "The ICD-10 is copyrighted by the World Health Organization, which owns and publishes the classification." *See* International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM), https://www.cdc.gov/nchs/icd/icd10cm.htm, copy incorporated into the record of proceedings.

[5] On appeal, the Petitioner also contends that his "proposed business will lead to the creation of jobs," but the "Personnel Forecast" contained in his business plan reflects only six company staff after five years. In *Dhanasar*, we noted that "[a]n endeavor that has significant potential to employ U.S. workers or has other substantial positive economic effects, particularly in an economically depressed area, for instance, may well be understood to have national importance." *Id.* at 890. Here, the level of projected staffing reflected in the Petitioner's business plan is not sufficient to support a finding that his proposed endeavor has national importance based on its potential to employ U.S. workers.

in the United States, and a Memorandum of Cooperation.[6] He also offered reference letters discussing his medical training, clinical work, research projects, and mobile application.[7]

In denying the petition, the Director noted that although the business plan identified the Petitioner "as the owner, developer and operator" of the company that will launch the mobile application, the record lacked evidence indicating that he has any experience owning or running a business.[8] Additionally, the Director found the Petitioner had not shown "progress toward achieving the proposed endeavor, or demonstrated any interest of potential customers, users, investors or other relevant entities or individuals." Lastly, the Director stated that while "the business plan indicates that the Petitioner 'is planning to raise $200,000 to fund the launch of operations of in U.S. market,'" the record did not identify the source of this funding or show "that he has attained that amount for the furthering of his plans."

For the reasons discussed below, we agree with the Director's determination that the Petitioner has not established he is well positioned to advance his proposed endeavor. The record reflects that the Petitioner has clinical and research experience and expertise in the field of neurology, and that he has had some degree of success launching in Kazakhstan. However, the record does not sufficiently document his record of success in running a business or his specific plans for funding his proposed U.S. endeavor to demonstrate that he is well positioned to advance the submitted business plan. Further, the record does not adequately show the interest of potential customers, users, investors, or other relevant entities.

On appeal, the Petitioner provides a letter discussing his business plan and company funding, copies of 2017 licenses and a 2015 registration certificate for named after in Kazakhstan, and lists of the LLC's operational activities and staffing. The Petitioner contends that the documents relating to named after reflect "his position as a co-founder and shareholder of a business." However, this evidence does not show this company's record of success in the neurology field or healthcare industry. These documents are not sufficient to demonstrate that his experience in founding this LLC reflects a record of success in running a healthcare mobile application development business or otherwise renders him well positioned to advance his endeavor aimed at improving the diagnosis and treatment of stroke patients.

The Petitioner points to a letter of support from director of stating: "In 2014, the company decided to

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[6] The Memorandum of Cooperation reflects an agreement between the Petitioner and a healthcare information technology consultant, to further develop the unified digital platform for mobile diagnostic support in the healthcare industry."

[7] We discuss only a sampling of these letters, but have reviewed and considered each one.

[8] The business plan identifies the Petitioner as owner and operator of - the company that will introduce to the U.S. market. It lists the Petitioner's residential apartment address as the company location. Although the business plan states that this "company is already operating in Kazakhstan," the record does not include evidence to corroborate the claim.

provide sponsorship and financial assistance for the development and introduction of He contends that "raising money from proves "his business acumen." The letter, however, does not specify the amount of funding provided for development of in Kazakhstan or provide other details of the financial assistance he received from that company. Furthermore, while the aforementioned letter indicates that the Petitioner was able to raise funds for launch in Kazakhstan, the record does not include evidence of investor support for the mobile application's U.S. launch. For example, while the Petitioner's business plan states that he "is planning to raise $200,000 to fund the launch and operations of in the U.S. market," the source of the proposed endeavor's U.S. funding is not identified, nor is Kazakhstan listed as an investor that will support his proposed endeavor in the United States.

As evidence that his "prior achievements in his home country will serve as a basis to support the implementation of his plan in the U.S.," the Petitioner offers letters from colleagues discussing capabilities and utilization by medical centers in Kazakhstan. For instance, head of the neurology department at notes that the "successful implementation of application at stroke centers of the region allowed to better [*sic*] organize patient care by improving the quality of training of specialists at our stroke center, optimizing the diagnosis and treatment process, streamlining medical recordkeeping for patients with strokes."

In addition, the Petitioner provides a letter from a clinical neurologist practicing in California. discusses the various features of and contends that it "significantly improves the quality and speed of the patient examination and treatment" for stroke, but she does not state whether she has used, or intends to utilize, the mobile application at her medical practice in California. The record does not include any other letters from neurologists, potential customers, users, or investors in the United States expressing their interest in the Petitioner's proposed endeavor to launch in this country.

The Petitioner maintains that has a "competitive edge" over other product offerings in the United States. For example, he asserts that is superior to the mobile application because his product offers prevention techniques and includes functionalities for medical practitioners. While several medical centers in Kazakhstan appear to have utilized the record does not adequately document that the mobile application stands to be adopted at any U.S. medical centers or in any U.S. regions.

In sum, the Petitioner has not demonstrated a record of success or progress in his field, or a degree of interest in his work from relevant parties, that rise to the level of rendering him well positioned to advance his proposed endeavor of mobile application development aimed at improving care for stroke patients. As the record is insufficient to demonstrate that the Petitioner is well positioned to advance his proposed endeavor, he has not established that he satisfies the second prong of the *Dhanasar* framework.

C. Balancing Factors to Determine Waiver's Benefit to the United States

As explained above, the third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. Here, the Petitioner claims that he is eligible for a waiver due to his education, medical experience, and expertise in neurology. However, as the Petitioner has not established that he is well positioned to advance his proposed endeavor as required by the second prong of the *Dhanasar* framework, he is not eligible for a national interest waiver and further discussion of the balancing factors under the third prong would serve no meaningful purpose.

III. CONCLUSION

As the Petitioner has not met the requisite three prongs set forth in the *Dhanasar* analytical framework, we find that he has not established he is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.

Cite as *Matter of S-K-*, ID# 1412274 (AAO July 17, 2018)